

1
2 UNITED STATES DISTRICT COURT
3 WESTERN DISTRICT OF WASHINGTON
4 AT TACOMA

5 CLARK COUNTY
6 BANCORPORATION,

7 Plaintiff,

8 v.

9 FEDERAL DEPOSIT INSURANCE
10 CORPORATION, AS RECEIVER FOR
11 BANK OF CLARK COUNTY,

12 Defendant.

CASE NO. C14-5816 BHS

ORDER GRANTING
DEFENDANT'S MOTION TO
COMPEL, REQUESTING
SUPPLEMENTAL RESPONSE
FROM PLAINTIFF, AND
RENOTING PLAINTIFF'S
MOTION

13 This matter comes before the Court on Defendant Federal Deposit Insurance
14 Corporation-Receiver's ("FDIC-R") motion to compel (Dkt. 129) and Plaintiff Clark
15 County Bancorporation's ("CCB") motion for contempt (Dkt. 132). The Court has
16 considered the pleadings filed in support of and in opposition to the motions and the
17 remainder of the file and hereby rules as follows:

18 **I. PROCEDURAL AND FACTUAL HISTORY**

19 On February 10, 2016, CCB filed an amended complaint asserting one cause of
20 action arising from the FDIC-R's disallowance of CCB's claim for tax refunds. Dkt. 88.
21 CCB owned all of the stock in Bank of Clark County ("Bank"), which the FDIC-R took
22 over as a failed institution. CCB and the Bank entered into a Tax Allocation Agreement.
CCB alleges that the agreement "requires calculation of federal income taxes on a
separate entity basis. A subsidiary may receive only an amount which is equal to the

1 amount of the tax refund that the subsidiary would have received from the I.R.S. if its
2 taxes had been calculated on a stand-alone basis.” *Id.* ¶ 21. CCB attached to the
3 complaint a chart showing the Bank’s percentage taxable income and refund amount. *Id.*,
4 Exh. E (“Chart”).

5 During discovery FDIC-R served requests for admissions and interrogatories on
6 CCB. Interrogatory 1 requested an explanation of the computations and calculation of
7 the Chart. Dkt. 129 at 28. Interrogatory 3 requested an explanation of a statement CCB
8 included in its motion for summary judgment. *Id.* Interrogatory 4 requested an
9 explanation for and information pertaining to any denial of a request for admission. *Id.* at
10 29. CCB objected to this discovery. On November 16, 2017, FDIC-R filed a motion to
11 compel. Dkt. 129. On December 18, 2017, CCB responded. Dkt. 134. On December
12 29, 2017, FDIC-R replied. Dkt. 135.

13 Also during discovery, CCB served subpoenas on the United States Department of
14 the Treasury (“DOT”) requesting the production of certain documents. CCB asserts that
15 DOT has not responded to the subpoena. On December 1, 2017, CCB filed a motion for
16 contempt requesting that the Court hold DOT in contempt for failing to respond. Dkt.
17 132.

18 **II. DISCUSSION**

19 **A. Compel**

20 “On notice to other parties and all affected persons, a party may move for an order
21 compelling disclosure or discovery.” Fed. R. Civ. P. 37(a)(1). “Parties may obtain
22

1 discovery regarding any nonprivileged matter that is relevant to any party's claim or
2 defense and proportional to the needs of the case" Fed. R. Civ. P. 26(b)(1).

3 In this case, FDIC-R moves to compel CCB to respond to interrogatories 1, 3, and
4 4. With regard to numbers 3 and 4, FDIC-R has shown that the information is relevant to
5 issues in this case. Explanations regarding computations and calculations for numbers in
6 a chart attached to the complaint is relevant. Moreover, information regarding a position
7 an opposing party took in an earlier summary judgment motion is also relevant.
8 Therefore, the Court grants FDIC-R's motion on these requests.

9 Regarding interrogatory number 4, FDIC-R has shown that responses are required.
10 While CCB is correct that Rule 36 does not control interrogatories, multiple courts have
11 held that, under Rule 33, requesting explanations for denials are appropriate as long as
12 the party does not exceed the allowed number of interrogatories. *See, e.g., Jovanovich v.*
13 *Redden Marine Supply, Inc.*, C10-924-RSM, 2011 WL 4459171, at *2-3 (W.D. Wash.
14 Sept. 26, 2011). FDIC-R requests information regarding eight denials, which does not
15 exceed its allotted 25 interrogatories. Therefore, the Court grants FDIC-R's motion on
16 this issue.

17 Finally, regarding fees, the Court reserves ruling on the fee request. If CCB
18 timely responds subsequent to this order, then the Court is inclined to deny fees.
19 However, if CCB asserts new objections or otherwise obstructs production, FDIC-C may
20 move for these fees plus others incurred in attempting to resolve such obstructions.

1 **B. Contempt**

2 The Court finds at least two potential problems with CCB's motion. First, due
3 process requires notice and an opportunity to be heard. While CCB certifies that the
4 motion was served on the parties, the Court is unable to locate any certification that the
5 motion was served on DOT. Without such certification, the Court will not hold a party in
6 contempt without notice.

7 Second, CCB's subpoena requires compliance more than 100 miles from where
8 DOT apparently conducts business. CCB served the subpoenas on DOT in Washington
9 D.C. and required compliance in Vancouver, WA. Such requests may violate Fed. R.
10 Civ. P. 45(c).

11 Therefore, the Court requests a supplemental response from CCB before
12 considering the merits of its motion. A response is due by February 9, 2018. Failure to
13 respond will result in denial of the motion. The Clerk shall renote the motion for
14 consideration on the Court's February 9, 2018 calendar.

15 **III. ORDER**

16 Therefore, it is hereby **ORDERED** that FDIC-R's motion to compel (Dkt. 129) is
17 **GRANTED** and the Clerk shall renote CCB's motion for contempt (Dkt. 132). CCB
18 may file a supplemental response no later than February 9, 2017.

19 Dated this 31st day of January, 2018.

20 

21 BENJAMIN H. SETTLE
22 United States District Judge